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Filing date: **12/27/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054611
Party	Plaintiff SALT Branding LLC
Correspondence Address	ANGELA C WILCOX VVANEK VICKERS & MASINI PC 111 SOUTH WACKER DRIVE , STE 4050 CHICAGO, IL 60606 UNITED STATES awilcox@vaneklaw.com
Submission	Motion for Default Judgment
Filer's Name	Angela C. Wilcox
Filer's e-mail	methier@vaneklaw.com
Signature	/Angela C. Wilcox/
Date	12/27/2011
Attachments	WWW.SALTYDESIGNS.COM AND DESIGN_Motion for Default Judgment_12 27 2011_FINAL FILED.pdf (14 pages)(367832 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SALT BRANDING LLC, a California
Limited Liability Company,

Petitioner,

vs.

VALERIE ALVAREZ, an Individual
Resident of Indiana

Respondent.

)
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)
)
) Cancellation No. 92054611
)
)
)
)
)

PETITIONER'S MOTION FOR DEFAULT JUDGMENT

Petitioner, SALT Branding, LLC ("Petitioner"), by and through its undersigned counsel, hereby moves for a default judgment against Respondent, Valerie Alvarez ("Respondent") in the above-captioned matter, pursuant to Fed. R. Civ. P. 55(a); 37 C.F.R. § 2.114(a); and TBMP §§ 312.01, 508, on the ground that Respondent failed to file an Answer to Petitioner's Petition for Cancellation, which Answer was due on December 19, 2011, and in support thereof states as follows:

BACKGROUND

1. On October 6, 2011, Petitioner filed a timely Petition for Cancellation through undersigned counsel and, also on October 6, 2011, served its Petition for Cancellation on Respondent through the Attorney of Record for Respondent's trademark registration for the mark WWW.SALTYDESIGNS.COM+DESIGN (Reg. No. 3,501,393) via U.S. First Class Mail.

2. On October 6, 2011, the Board issued a scheduling order stating that Respondent's Answer was due on November 15, 2011. In its order, the Board also instructed

Petitioner to forward an additional copy of its Petition for Cancellation to Respondent at her address of record.

3. On October 11, 2011, the Board's scheduling order sent to Respondent's address of record was returned by the United States Postal Service. The returned mail included a forwarding address for Respondent which the Board posted to the record. Please see Exhibit 1 attached hereto.

4. On October 18, 2011, Petitioner served the Petition for Cancellation on Respondent via U.S. Certified Mail, postage prepaid, return receipt at Respondent's forwarding address included on the Board's returned scheduling order.

5. On October 20, 2011, Respondent signed the return receipt, which was returned to undersigned counsel. Please see Exhibit 2 attached hereto.

6. On November 7, 2011, the Board issued a revised scheduling order stating that Respondent's Answer was due by December 17, 2011. Because December 17, 2011 fell on a Saturday, Respondent's Answer was due no later than Monday, December 19, 2011.

7. Respondent did not file an Answer on or before December 19, 2011, and has not filed an Answer or any other document in this proceeding, as of the date of this filing, December 27, 2011.

8. Respondent has not filed a motion requesting an extension of time to Answer. Further, Respondent has not contacted Petitioner or its counsel to request an extension of time to file its Answer, and has not otherwise contacted Petitioner or its counsel.

ARGUMENT

9. Respondent's time to Answer expired on December 19, 2011. Respondent, who signed and returned the Certified Mail return receipt, indisputably received notice of the Petition

for Cancellation. Respondent has not made, and cannot make, any showing that good cause excuses her failure to file a timely Answer, or her failure to file an Answer to date, or otherwise respond to the Petition for Cancellation. *See* Fed.R.Civ.P. 55(a); 37 C.F.R. § 2.114(a); TBMP §§ 312.01, 508; *DeLorme Pub 'g Co. v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222 (TT.A.B. 2000).

10. Pursuant to 15 U.S.C. § 1127 and as more fully pleaded in Petitioner's Petition for Cancellation filed on October 6, 2011, Respondent has abandoned her registration for the mark WWW.SALTYDESIGNS.COM+DESIGN (Reg. No. 3,501,393) due to nonuse and no intent to resume use of the mark as registered.

11. Alternatively, pursuant to 15 U.S.C. § 1052(d) and as more fully pleaded in Petitioner's Petition for Cancellation filed on October 6, 2011, Respondent's mark WWW.SALTYDESIGNS.COM+DESIGN (Reg. No. 3,501,393) as used for creative marketing design services; design of advertising flyers for others; design of advertising materials for others; business card design services; and design of internet advertising so resembles Petitioner's earlier used and registered marks SALT and SALT BRANDING, as used in connection with Petitioner's goods, as to be likely to cause confusion or cause mistake, or to deceive.

12. Respondent has effectively abandoned her Registration by her willful failure to file an Answer or otherwise respond to the Petition for Cancellation.

PRAYER FOR RELIEF

13. WHEREFORE, Petitioner SALT Branding, LLC respectfully requests that: this Motion for Default Judgment be granted; a default judgment be entered against Respondent; registration of the mark WWW.SALTYDESIGNS.COM+DESIGN, Registration No. 3,501,393 be cancelled; and this Petition for Cancellation be sustained in favor of the Petitioner.

Respectfully submitted,

SALT BRANDING LLC

Date: December 27, 2011

/Angela C. Wilcox/

/Michelle L. Ethier/

Angela C. Wilcox
Michelle L. Ethier
VANEK, VICKERS & MASINI, P.C.
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Chicago, Illinois 60606
Telephone: 312-224-1500
Facsimile: 312-224-1510

***Counsel for Petitioner,
SALT BRANDING LLC***

EXHIBIT 1

TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

77391272

Mailed: October 6, 2011

Cancellation No. 92054611
Registration No. 3501393

VALERIE ALVAREZ
509 SALEM DRIVE
EVANSVILLE, IN 47715 UNITED STATES

SALT Branding LLC

v.

Valerie Alvarez

ANGELA C WILCOX
VVANEK VICKERS & MASINI PC
111 SOUTH WACKER DRIVE STE 4050
CHICAGO, IL 60606 UNITED STATES

Millicent Canady, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant by the petitioner. An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVue system: <http://ttabvue.uspto.gov/ttabvue/>.

The Board acknowledges that petitioner included proof that it forwarded a service copy of its petition to registrant. However, the proof of service indicates that petitioner sent that service copy to an attorney for registrant, rather than to registrant. As provided in amended Trademark Rule 2.111(a), a petitioner must include "proof of service on the owner of record for the registration, or the owner's domestic representative of record, at the correspondence address of record." The rule does not direct a petitioner to serve an attorney, though an attorney should be served if the attorney is the registrant's designated domestic representative. The reference in the rule to correspondence address is a reference to the address for the owner of the registration or the domestic representative, if one has been appointed. While petitioner's proof of service is a reasonable attempt to effect service, petitioner is directed to forward an additional copy of its petition to the owner of record for the registration, at its address of record. In addition, any future filing must be served directly on the owner of the registration. If an attorney files an answer or other paper for registrant, thereby entering an appearance, petitioner may thereafter forward service copies to that attorney rather than registrant.



10-11-2011

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board's main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies. See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Exhibit 1 - Petitioner's Motion for Default Judgment

Time to Answer	11/15/2011
Deadline for Discovery Conference	12/15/2011
Discovery Opens	12/15/2011
Initial Disclosures Due	1/14/2012
Expert Disclosures Due	5/13/2012
Discovery Closes	6/12/2012
Plaintiff's Pretrial Disclosures	7/27/2012
Plaintiff's 30-day Trial Period Ends	9/10/2012
Defendant's Pretrial Disclosures	9/25/2012
Defendant's 30-day Trial Period Ends	11/9/2012
Plaintiff's Rebuttal Disclosures	11/24/2012
Plaintiff's 15-day Rebuttal Period Ends	12/24/2012

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVue record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the

absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at:

<http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing

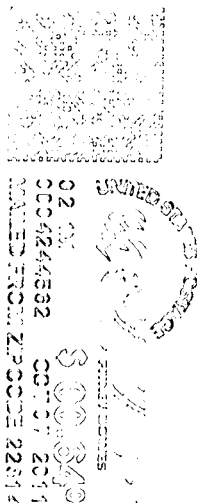
through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estta.uspto.gov>.

United States Patent and Trademark Office
 Commissioner for Trademarks
 P.O. Box 1451
 Alexandria, VA, 22313-1451
 If Undeliverable Return in Ten Days

OFFICIAL BUSINESS
 PENALTY FOR PRIVATE USE, \$300

Exhibit 1 - Petitioner's Motion for

AN EQUAL OPPORTUNITY EMPLOYER



92054611

VALERIE ALVAREZ
 509 SALEM DRIVE
 EVANSVILLE, IN 47715

4771537280 0013
 2231301451

X 220 NEE 1 7101 00 10/07/11
 FORWARD TIME EXP RTN TO SEND
 ALVAREZ MD
 RR 1 BOX 125
 MC LEANSBORO IL 62859-9723
 RETURN TO SENDER

EXHIBIT 2

Exhibit 2 - Petitioner's Motion for Default Judgment

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <i>Valerie Alvarez</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Valerie Alvarez c/o Alvarez MD RR 1 Box 126 McLeansboro, IL 62859-9723		B. Received by (Printed Name) C. Date of Delivery 12/20/11	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
		7008 0150 0001 1764 0705	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7008 0150 0001 1764 0705

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To Valerie Alvarez	
c/o Alvarez MD	
RR 1 Box 126	
City, State, ZIP+4 McLeansboro, IL 62859-9723	
PS Form 3800, August 2006 See Reverse for Instructions	

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing MOTION FOR DEFAULT JUDGMENT is being served by Certified First Class mail, postage prepaid, return receipt requested, this 27th day of December, 2011, on Respondent:

Valerie Alvarez
C/O Alvarez MD
RR 1 Box 126
McLeansboro, IL 62859-9723

Executed this 27th day of December, 2011

at Chicago, Illinois.


Shannon Vitullo